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d/b/a Glidewell Laboratories
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

12 JAMES R. GLIDEWELL DENTAL
13 CERAMICS, INC.,

14 Plaintiff,
15 vs.
16 KEATING DENTAL ARTS, INC.,
17 Defendant.

18 AND RELATED
19 COUNTERCLAIMS.

12 Case No. SACV11-01309-DOC(ANx)

13 **JAMES R. GLIDEWELL DENTAL
CERAMICS, INC.'S NOTICE OF
MOTION AND MOTION FOR
PARTIAL SUMMARY JUDGMENT
AS TO KEATING'S INVALIDITY
DEFENSE AND COUNTERCLAIM**

18 Hearing

19 Date: December 17, 2012
Time: 8:30 a.m.
Ctrm: 9D, Hon. David O. Carter

20 Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

Snell & Wilmer

LAW OFFICES
350 South Grand Avenue, Suite 2600, Two California Plaza
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1 PLEASE TAKE NOTICE that on December 17, 2012, at 8:30 a.m., or as
 2 soon thereafter as counsel may be heard in Courtroom 9D of the above-entitled
 3 court, plaintiff and counter defendant James R. Glidewell Dental Ceramics, Inc.
 4 (“Glidewell”) will, and hereby does, move the Court for an order under Rule 56 of
 5 the Federal Rules of Civil Procedure as follows:

6 **1. For partial summary judgment on defendant and counterclaimant**
 7 **Keating Dental Arts, Inc.’s (“Keating”) on Defendant’s Fourth Counterclaim**
 8 **for Cancellation of Trademark Registration No. 3,739,663.**

9 The ground for partial summary judgment is that (a) Glidewell’s BruxZir
 10 mark, Registration No. 3,739,663, is presumed to be suggestive and therefore
 11 distinctive; (b) the evidence conclusively establishes that the BruxZir mark is
 12 suggestive and therefore distinctive; (c) the evidence conclusively establishes that
 13 the BruxZir mark, if descriptive, has attained secondary meaning; (d) Keating
 14 cannot carry its burden to prove that the BruxZir mark is generic; (e) Keating
 15 cannot carry its burden to prove that the BruxZir mark is descriptive without
 16 secondary meaning.

17 **2. For partial summary judgment on Keating’s First Affirmative**
 18 **Defense for invalidity of Trademark Registration No. 3,739,663.**

19 The ground for partial summary judgment is that (a) Glidewell’s BruxZir
 20 mark, Registration No. 3,739,663, is presumed to be suggestive and therefore
 21 distinctive; (b) the evidence conclusively establishes that the BruxZir mark is
 22 suggestive and therefore distinctive; (c) the evidence conclusively establishes that
 23 the BruxZir mark, if descriptive, has attained secondary meaning; (d) Keating
 24 cannot carry its burden to prove that the BruxZir mark is generic; (e) Keating
 25 cannot carry its burden to prove that the BruxZir mark is descriptive without
 26 secondary meaning.

27 This motion is based on this notice of motion and motion; the concurrently-
 28 filed Memorandum of Points and Authorities, Statement of Uncontroverted Facts

1 and Conclusions of Law, Appendix of Evidence, the pleadings and papers on file in
2 this action, and any argument received by the Court at the time of any hearing on
3 this motion.

4 Dated: November 19, 2012

5 SNELL & WILMER L.L.P.

6 By: *s/Greer N. Shaw*

7 Philip J. Graves
8 Greer N. Shaw

9 Attorneys for Plaintiff

10 James R. Glidewell Dental Ceramics, Inc. dba
11 GLIDEWELL LABORATORIES

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1 ***Glidewell Laboratories v. Keating Dental Arts, Inc.***
2 United States District Court, Central, Case No. SACV11-01309-DOC (ANx)

3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on November 19, 2012, I electronically filed the
5 document described as **JAMES R. GLIDEWELL DENTAL CERAMICS,**
6 **INC.'S NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY**
7 **JUDGMENT AS TO KEATING'S INVALIDITY DEFENSE AND**
8 **COUNTERCLAIM** with the Clerk of the Court using the CM/ECF System which
9 will send notification of such filing to the following:

10 David G. Jankowski
11 Jeffrey L. Van Hoosear
12 Lynda J Zadra-Symes
13 Knobbe Martens Olson and Bear LLP
14 2040 Main Street, 14th Floor
15 Irvine, CA 92614

16 **Attorneys for Defendant Keating
17 Dental Arts, Inc.**
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24 Dated: November 19, 2012

25 SNELL & WILMER L.L.P.

26 By: *s/Philip J. Graves*
27 Philip J. Graves
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30 James R. Glidewell Dental Ceramics, Inc.
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